IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

C.W.P. No. 17987 of 2004

Date of Decision: August 25, 2006

Om Parkash Arora

…..Petitioner

Vs.

Uttar Haryana Bijli Vitran Nigam Ltd.

…..Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. R.K. Malik, Advocate,
for the petitioner.

Mr. Babbar Bhan, Advocate for
Mr. R.S. Chahar, Advocate
for the respondent.

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M.M. KUMAR, J. (ORAL)

This petition filed under Article 226 of the Constitution praying for issuance of direction to the respondent to consider the claim of the petitioner for promotion from the post of Assistant Engineer to that of Assistant Executive Engineer with effect from the date persons junior to him were promoted on June 30, 1999 (P-3). Another prayer made by the petitioner is that the recovery of the benefits which were paid to him in lieu

of the senior scale, amounting to Rs.48,166/- be not effected from him as he did not conceal or mislead any fact to the respondent.

Brief background facts would be necessary for disposal of the instant petition. The petitioner was appointed as Line Superintendent on December 8, 1965 and he was promoted as Assistant Engineer on September 1, 1985 on adhoc basis. His promotion was regularized as Assistant Engineer on April 10, 1990. He was granted the pay scale of Rs.14300-18300/- by counting the period from September 1, 1985 on September 1, 1997. On account of the fact that the adhoc period from September 1, 1985 to April 10, 1990 was not to be counted for 12 years period required for release of senior scale, the recovery is sought to be made for the over-payment to the extent of Rs.48,166/-, as the petitioner was granted the senior scale/ selection grade of Rs.14300-18300/- w.e.f. April 9, 2002. It is also the case of the petitioner that a charge-sheet was issued to him on October 10, 1997 and on that account a number of persons junior to him were considered and promoted on June 30, 1999 (P-3). It is appropriate to mention that the petitioner stands at seniority No. 1063 whereas on June 30, 1999 (P-3) persons junior to him in the seniority list like Mr.O.P. Chhabra, (1065), Mr. Ram Niwas Rohilla (1070), Mr. Inder Muni Jain (1071), Mr. Vinod Kumar Tandon (1075) and Mr. Kesho Ram (1079) were promoted. The case of the petitioner was deferred for promotion presumably on the ground that charge-sheet dated October 10, 1997, for imposition of major penalty was pending against him.

In the written statement it remains undisputed that the respondent after considering the reply filed by the petitioner to the charge sheet dated October 10, 1997 had decided to drop the charges against the petitioner on March 28, 2002 (P-4). It has, however, been pointed out that another charge-sheet dated November 27, 1997 was decided against the petitioner on May 19, 1999 in which the petitioner was censured and an amount of Rs.1477.40/- being 40% of Rs.3693.52/- alongwith 18% interest were recovered from the petitioner. On account of the aforementioned charge-sheet which was pending on June 30, 1999, the case of the petitioner was not considered. In the meanwhile, the petitioner has retired from service on December 31, 2003.

Having heard the learned counsel for the parties at some length, we are of the view that there is considerable merit in the submissions made by the learned counsel for the petitioner. The prayer of the petitioner that he deserves to be considered for promotion on the post of Assistant Executive Engineer on the ground that the charges have been dropped against him on March 28, 2003 (P-4) merits acceptance and his case is required to be considered by the respondents for promotion on the post of Assistant Executive Engineer w.e.f. June 30, 1999, when persons junior to the petitioner referred above like O.P.Chhabra to Kesho Ram were promoted. Accordingly, a direction deserves to be issued to the respondent in that regard.

We are further of the view that no recovery for erroneous fixation of salary of the petitioner by taking into account the adhoc period

from September 1, 1985 to April 10, 1990 could be effected as the petitioner had not made any misrepresentation or concealed any material fact. In that regard reliance could be placed on the judgment of Hon'ble the Supreme Court in **Sahib Ram v. State of Haryana**, 1995 Suppl.(1) SCC 18.

In view of the above, the writ petition is allowed. The respondent is directed to consider the case of the petitioner for promotion to the post of Assistant Executive Engineer w.e.f. June 30, 1999 when persons junior to the petitioner were considered and promoted. The respondent is also restrained from effecting any recovery amounting to Rs.48,166/- from the petitioner as there was no misrepresentation or concealment in obtaining that payment. The needful shall be done within a period of three months from the date a certified copy of this order is received. If the petitioner is found entitled to be promoted to the post of Assistant Executive Engineer, then all consequential benefits with regard to seniority and promotion. Accordingly the salary of the petitioner shall be refixed. The arrears of salary, pension and benefits should be confined to three year two months preceding the date of filing the petition which has been filed on November 13, 2004.

(M.M.KUMAR)
JUDGE

August 25, 2006
sanjay

(M.M.S.BEDI)
JUDGE